

DISPUTE RESOLUTION SERVICE

D00017740

**Decision of Independent Expert
(Summary Decision)**

Tarmac Trading Limited

and

webdesigns andprint

1. The Parties:

Complainant: Tarmac Trading Limited
Portland House,
Bickenhill Lane, Solihull
Birmingham
B37 7BQ
United Kingdom

Respondent: webdesigns andprint
Unit 37
Ellesmere Port
cheshire
CH65 4EH
United Kingdom

2. The Domain Name:

kentcountytarmac.co.uk

3. Notification of Complaint

I hereby certify that I am satisfied that Nominet has sent the Complaint to the Respondent in accordance with paragraphs 2 and 4 of the Procedure.

Yes

No

4. Rights

The Complainant has, to my reasonable satisfaction, shown Rights in respect of a name or mark which is identical or similar to the Domain Name.

Yes No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name kentcountytarmac.co.uk is an Abusive Registration.

Yes No

6. Other Factors

I am satisfied that no other factors apply which would make a summary decision unconscionable in all the circumstances.

Yes No

7. Comments (optional)

The facts of this case bear similarity to those in DRS 15757 (watfordpavingandtarmac.co.uk). In each of these cases, the Complainant (formerly known as Lafarge Tarmac Trading Limited) has asserted its rights in respect of its mark "TARMAC" and has complained of the use of this mark by a third party in its domain name to promote its paving and driveway services.

In DRS 15757, the Expert concluded that the use being made by the respondent in that case of the word "TARMAC" in these circumstances was to describe a genuine offering of services, and the domain name in question was therefore not an Abusive Registration.

In the case before me, however, the Domain Name comprises only the geographical descriptor (kentcounty) together with the Complainant's mark (tarmac). Ignoring the <co.uk> suffix, there is no other element to the Domain Name, compared with the situation in DRS 15757 where there is an additional element in the domain name, namely the addition of the words "paving" and "and". The Respondent in this case (DRS 17740) is using the Domain Name to promote not only the provision of driveway

services using the material promoted under the Complainant's "TARMAC" mark, but also driveway, paving and landscaping services using material which appears to compete with the Complainant's products. There is nothing in the Domain Name to suggest to an internet user that the Respondent provides services using material other than the Complainant's "Tarmac" product.

The combination of these factors are material enough, in my opinion, to distinguish the findings on Abusive Registration in these two cases. In the case before me, I find that the Domain Name is being used in a manner which has been unfairly detrimental to the Complainant's Rights in its "TARMAC" mark, and accordingly the Domain Name, in the hands of the Respondent, is an Abusive Registration.

8. Decision

I grant the Complainant's application for a summary decision. In accordance with paragraph 5f of the Procedure, the Domain Name will therefore be transferred to the Complainant.

Signed: Ravi Mohindra

Dated: 4 September 2016